



Multnomah and Lane County Health Departments, Oregon

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Liability for Emergency Health Care Providers:

Oregon's Public Health Approach

Presentation Objectives

Give participants...

- ❖ Knowledge of Oregon's approach to protecting volunteer emergency health care providers from liability
- ❖ An appreciation of benefits and limits of this approach

Oregon's Approach

A Confluence of Laws – 1

Emergency Management (ORS 401)

- ❖ Governor may declare a state of emergency...
 - at the request of a county governing body
 - or after determining that an emergency has occurred or is imminent
- ❖ Governor may also suspend provisions of any state agency rule that would hinder response to an emergency

Oregon's Approach

A Confluence of Laws – 2

Public Health Crisis (HB 2251)

- ❖ Governor may declare a state of impending public health crisis when...
 - threat to the public health is imminent and likely to be widespread, life-threatening
 - threat requires immediate medical action
- ❖ Declaration activates
 - Liability protections for volunteers
 - Expanded public health powers

Oregon's Approach

A Confluence of Laws – 3

Public Health Laws (ORS 431 & 433)

- ❖ Establishes state Department of Human Services (DHS) as state public health agency
- ❖ Delegates authority and responsibility for public health laws and programs to counties (“local public health authority”)
- ❖ Recognizes authority and responsibility of state & local public health to prepare for and respond to emergencies

Oregon's Approach

A Confluence of Laws – 4

Tort Claims Act (ORS 30.260 – 30.300)

- ❖ Establishes state tort claims system as exclusive remedy for governmental negligence (no other civil action is permitted)
- ❖ Claim against public body (includes local government) is substituted for claim against individual
- ❖ Award limits:
 - \$100,000 for individual
 - \$500,000 multiple individuals in single event

Oregon's Approach

A Confluence of Laws – 5

Tort Claims Act (ORS 30.260 – 30.300)

❖ Covers:

- ***Negligence*** claims based in agent's performance of duties
- Failure to perform a discretionary duty, whether or not the discretion is abused

❖ Does NOT Cover:

- Acts of malfeasance
- Acts done or omitted in bad faith or with malice

Oregon's Approach

A Confluence of Laws – 6

Emergency Mgmt Revisions (HB 2410)

- ❖ Defines “emergency health care provider” (EHCP)
 - Licensed, certified, or otherwise authorized to provide health care
- ❖ Gives DHS authority to establish registry of EHCPs. Registry addresses:
 - Licensure or certification
 - Credentialing
 - Identification
 - Clinical expertise
 - Required training

Oregon's Approach

A Confluence of Laws – 7

Emergency Mgmt Revisions (HB 2410)

- ❖ Requires DHS to set criteria for health care response plans
- ❖ Gives DHS and counties power to declare facilities as “emergency health care centers” (EHCCs)
 - Evaluation, triage, referral
 - Treatment
 - Preparation for transport

Oregon's Approach

A Confluence of Laws – 8

Emergency Mgmt Revisions (HB 2410)

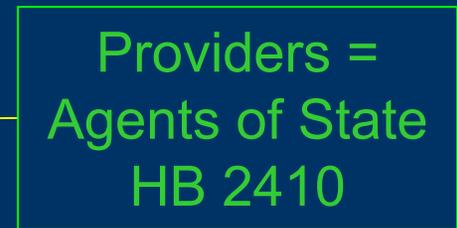
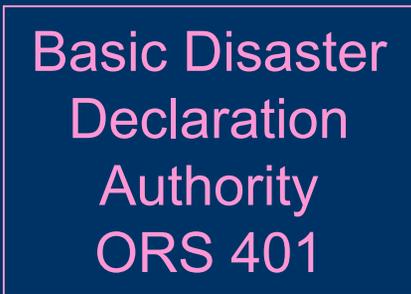
- ❖ Makes EHCPs and other medical volunteers “agents” of the state for liability purposes
 - Serve without compensation
 - Provide services per health care response plan
 - Applies **only** to emergency or impending public health crisis declared by governor

Oregon's Approach

A Confluence of Laws and Agreements: Local County Response

- ❖ Makes Lane Medical Reserve Corps members County volunteers
 - Serve under direction of the Health and Human Services Administrator
 - Requires completion of County volunteer sign up process
 - MRC volunteers may be requested from Public Health by local hospitals and emergency response

A Confluence of Laws - Summary



Bottom Lines

Oregon's Approach:

- ❖ Provides strong liability protection for *certain* health care volunteers
 - Licensed/certified
 - Credentialed
 - Providing defined services per plan
 - Serving in declared emergency

Limitations/Un-answered Questions

- ❖ Willingness of governor to declare emergency/PH crisis
- ❖ Willingness of counties to extend their Tort Claims liability (alternate approach)
- ❖ Willingness of providers to accept Tort Claims liability protection
- ❖ Status of retired health care professionals
- ❖ Status of unlicensed personnel
- ❖ Other (for discussion)

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Questions

Law and Bill Resources

- ❖ HB 2410
 - <http://www.leg.state.or.us/03reg/measures/hb2400.dir/hb2410.a.html>
- ❖ HB 2251
 - <http://www.leg.state.or.us/03reg/measures/hb2200.dir/hb2251.a.html>
- ❖ ORC 30
 - <http://www.leg.state.or.us/ors/030.html>
- ❖ ORS 401
 - <http://www.leg.state.or.us/ors/401.html>
- ❖ ORS 431
 - <http://www.leg.state.or.us/ors/431.html>
- ❖ ORS 433
 - <http://www.leg.state.or.us/ors/433.html>

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